

**STATE WATER RESOURCES CONTROL BOARD
BOARD MEETING – DIVISION OF WATER RIGHTS
NOVEMBER 15, 2006**

ITEM: 11

SUBJECT

CONSIDERATION OF A PROPOSED ORDER GRANTING AN EXTENSION OF TIME TO PUT WATER TO FULL BENEFICIAL USE UNDER PERMIT 16762 OF RANCHO MURIETA COMMUNITY SERVICES DISTRICT

DISCUSSION

The State Water Board issued Permit 16762 on September 16, 1975. The permit is currently held by Rancho Murieta Community Services District (Permittee). Permit 16762 authorizes: (1) direct diversion of six cubic feet per second, and (2) diversion to storage of 4,050 acre-feet per annum from the Cosumnes River from November 1 through May 31 of the succeeding year.

Under the terms of the permit, the water was to be applied to full beneficial use by December 1, 1990. In 1982, the Division granted a ten-year extension of time for use of the water, through December 1, 2000.

On November 29, 2000, Permittee filed a petition for another ten-year extension of time within which to extend the completion date to 2010. Full beneficial use of water is not currently anticipated prior to 2020. Consequently, on September 26, 2006, Permittee filed a third petition, seeking a twenty-year extension. If granted, Permittee would have until December 1, 2020, to put the water to full beneficial use.

Together with the previously granted extension, the extension now requested would bring the total extension period to 30 years. Under State Water Board Resolution No. 2002-0106, section 2.6.11, the Division only has delegated authority to grant extensions when the period of extension, in combination with all extensions previously granted under delegated authority, does not exceed 25 years. The requested extension exceeds that delegated authority by five years and thus requires Board approval.

POLICY ISSUE

Should the State Water Board adopt the proposed order?

FISCAL IMPACT

None.

REGIONAL BOARD IMPACT

None.

STAFF RECOMMENDATION

Staff recommends adoption of the proposed order.

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

ORDER WR 2006 -

In the Matter of Permit 16762 (Application 23416)
RANCHO MURIETA COMMUNITY SERVICES DISTRICT

SOURCES: (1) Cosumnes River tributary to Mokelumne River,
(2) Unnamed Streams tributary to Cosumnes River, and
(3) Unnamed Stream tributary to Crevis Creek thence Deer Creek thence
Cosumnes River

COUNTY: Sacramento

ORDER APPROVING PETITION FOR EXTENSION OF TIME

BY THE BOARD:

1.0 INTRODUCTION

In this order, the State Water Resources Control Board (State Water Board) approves an extension of time until December 1, 2020, for Rancho Murieta Community Services District (Permittee) to put water to beneficial use under Permit 16762.

2.0 BACKGROUND

The State Water Resources Control Board (State Water Board or Board), Division of Water Rights (Division) issued Permit 16762 to Bank of America N.T. & S.A. as Corporate Co-Trustees of the Pension Trust Fund for Operating Engineers on September 16, 1975, pursuant to Application 23416, and subsequently assigned the permit to Rancho Murieta Properties, Inc., on September 12, 1986. The permit was subsequently assigned to Permittee on January 14, 1988.

Permit 16762 authorizes Permittee to divert six cubic feet per second (cfs) by direct diversion from the Cosumnes River and 4,050 acre-feet (af) per annum to storage from November 1 through May 31 of the succeeding year as follows:

(A) 3,900 af per annum from the Cosumnes River to be stored as follows:

- (i) 1,600 af per annum in Chesbro Reservoir
- (ii) 2,300 af per annum in Guadalupe Reservoir

(B) 50 af per annum from an Unnamed Stream to be stored in Chesbro Reservoir.

(C) 100 af per annum from an Unnamed Stream to be stored in Guadalupe Reservoir.

The maximum rate of diversion from the Cosumnes River to offstream storage shall not exceed 46 cfs. The equivalent of the continuous flow allowance by direct diversion for any seven-day period may be diverted in a shorter time if there is no interference with vested rights. The total amount of water to be taken from the sources shall not exceed 6,368 af annually per water year of October 1 to September 30. The purposes of use include municipal, recreational, industrial and irrigation.

The permit required that construction work be completed by December 1, 1980, and that the water be applied to the authorized use by December 1, 1990.

On August 5, 1980, the Division issued Amended Permit 16762 in accordance with State Water Board Orders WR 79-13 and WR 79-23. The amendments did not change the time to complete full beneficial use. Amended Permit 16762 modified the quantities to be stored in the reservoirs identified in terms 2.0(A), (B), and (C) above as follows:

(A) 3,900 af per annum from the Cosumnes River to be stored as follows:

- 1. 1,250 af per annum in Chesbro Reservoir,
- 2. 2,610 af per annum in Calero Reservoir,
- 3. 850 af per annum in Clementia Reservoir, and
- 4. 40 af per annum in Fairway No. 10 Lower Lake.

The combined amount under (2), (3) and (4) shall not exceed a total of 2,650 af.

Permittee requested, and on September 14, 1982, the Division granted, an extension of time to commence or complete construction work and apply the water to full beneficial use. The time extension order required construction to be complete by December 1, 1990, and full beneficial use by December 1, 2000.

2.1 Time Extension Currently Before The Board

On November 29, 2000, Permittee filed a petition for a ten-year extension of time within which to commence or complete construction work and apply water to beneficial use. Permittee included the appropriate filing fees. Public notice of the request for an extension of time was issued on March 11, 2005, and no properly filed protests were submitted.

On December 14, 2005, Permittee filed a draft Initial Study pursuant to the California Environmental Quality Act (CEQA) to assess the environmental impacts of approving Permittee's Petition for Extension of Time. Permittee filed an Initial Study and Negative Declaration with the State Water Board dated May 25, 2006.

On September 26, 2006, Permittee filed a revised petition requesting no construction extension and a twenty-year extension of time within which to apply water to beneficial use. Permittee states Rancho Murieta is developing new home construction at an average rate of 60 new homes per year and estimates water will be put to full beneficial use by 2020. There are currently over 2,000 service connections serving a population of almost 5,000 persons. Permittee states 1,769 af per year of water are being used. The petition estimates growth over the last ten-year period and shows that in 1990 there were approximately 1,300 connections, and in 2000 there were over 2,000 connections (an increase of 2.5 percent per year). In the early 1990s the distribution system expanded to serve development in Rancho Murieta South, including construction of a 3 million gallon concrete and steel aboveground reservoir.

2.2 Authority to Issue a Time Extension

Upon a showing of good cause, the State Water Board may grant an extension of time within which to commence or complete construction work or apply water to beneficial use. (Wat. Code, § 1398.) Permittee must show that: (1) due diligence has been exercised; (2) failure to comply with previous time requirements has been occasioned by obstacles which could not be

reasonably avoided; and (3) satisfactory progress will be made if an extension of time is granted. Lack of finances, occupation with other work, physical disability, and other conditions incident to the person and not to the enterprise will not generally be accepted as good cause for delay.

3.0 CONCLUSIONS

Permittee has shown that due diligence has been exercised. As a public agency that supplies water for domestic or municipal use, Permittee qualifies as a municipality. (Decision D 858 (1956), at pp. 63-68.) A municipality is afforded some latitude in putting water to beneficial use. (See, e.g., Board Order WR 2000-13, at p. 14; see also Wat. Code, §§ 106.5, 1203.)

Permittee's Progress Reports filed from 1988-2004 (except for 1996, when no Progress Report was filed) show a continued increase in municipal use and service connections. Service connections increased 2.5 percent annually during the 1990 to 2000 time extension period. During that decade, water use increased 50 percent.

Permittee has shown that failure to comply with previous time requirements has been occasioned by obstacles that could not be reasonably avoided. Permittee states in Progress Reports from 1994 to 1995 that full build-out has not occurred due to periodic slowdowns in the pace of home sales. Nonetheless, although the rate of development has been slower than anticipated, it has steadily increased over time. Permittee has documented an average increase in service connections of 2.5 percent per year.

Permittee has shown that satisfactory progress will be made if a time extension is granted. The Progress Reports filed by Permittee show that the population and number of connections continue to increase. Permittee estimates it will maximize the beneficial use of the water by 2020. Permittee continues to show growth in the area, as evidenced by the Progress Reports filed from 1988 to 2004.

Permittee has shown good cause for the time extension.

3.1 CEQA Compliance

On April 19, 2006, Permittee issued a Notice of Determination for its Negative Declaration (SCH No.2006022137) for the project as lead agency under CEQA. As a responsible agency under CEQA, the State Water Board has considered the environmental document. The State Water Board will file a Notice of Determination within five days from the issuance of this order.

3.2 Updated Permit Conditions

The State Water Board finds that the permit conditions relating to the continuing authority and water quality objectives of the State Water Board should be updated to conform to California Code of Regulations, title 23, section 780, subdivisions (a) & (b). Fish, wildlife, and plant species that may be present have been or may be listed under the federal Endangered Species Act and/or the California Endangered Species Act. A condition should be placed in the permit making the Permittee aware of obligations resulting from these acts.

ORDER

IT IS HEREBY ORDERED that the State Water Board approves the petition for extension of time.

PERMIT 16762 IS AMENDED TO READ AS FOLLOWS:

1. Condition 8 of the amended permit is deleted and replaced with:

Complete application of the water to the authorized use shall be prosecuted with reasonable diligence and completed by December 1, 2020.

(0000009)

2. The continuing authority condition shall be updated to read as follows:

Pursuant to California Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the State Water Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of Permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirement for the authorized project. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the State Water Board also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution article X, section 2; is consistent with the public interest and is necessary to preserve or restore the uses protected by the public trust.

(0000012)

3. The water quality objectives condition shall be updated to read as follows:

The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Board if, after notice to the permittee and an opportunity for hearing, the State Water Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the State Water Board finds that: (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area

involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

(0000013)

4. The following Endangered Species Act condition shall be added:

This permit does not authorize any act that results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code §§ 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. §§ 1531 to 1544). If a "take" will result from any act authorized under this water right, the permittee shall obtain authorization for an incidental take prior to construction or operation of the project. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this permit.

(0000014)

CERTIFICATION

The undersigned Clerk to the Board does hereby certify that the foregoing is a full, true, and correct copy of an order duly and regularly adopted at a meeting of the State Water Resources Control Board held on November 15, 2006.

AYE:

NO:

ABSENT:

ABSTAIN:

DRAFT

Song Her
Clerk to the Board